

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Oldfield.

TELLICHERRY PICHU NAIDU (DEFENDANT), APPELLANT,

v.

C. JEFFERSON (PLAINTIFF), RESPONDENT.*

1920,
August
4, 5 and 17.

Lease for a term—Covenant for renewal of lease from time to time, whether void for perpetuity—Transfer of Property Act (IV of 1882), sec. 14—Covenants for renewal and for pre-emption, distinction between.

A covenant, in a lease for a term, for its renewal from time to time at the option of the lessee, is not void as being in violation of the rule against perpetuities; section 14, Transfer of Property Act, applies only to transfers and not to covenants such as covenants for renewal of lease.

Covenants for the renewal of a lease are not similar to covenants for pre-emption with regard to the application of the rule against perpetuities.

Kolathu Ayyar v. Rangva Vudhyar, (1915) I.L.R., 38 Mad., 114, distinguished.

SECOND APPEAL against the decree of K. SUNDARAM CHETTIYAR, Temporary Subordinate Judge of Nellore, in Appeal No. 90 of 1919 (Appeal Suit No. 18 of 1919 on the file of the District Court of Nellore), preferred against the decree of P. VENUGOPAL, the District Munsif of Nellore, in Original Suit No. 1563 of 1916.

The material facts are set out in the Judgment.

K. Krishnaswami Ayyangar for appellant.

T. V. Ramanatha Ayyar for respondent.

The Court delivered the following JUDGMENT :—

The plaintiff had a lease of the land in dispute from the defendant for a period of five years for mica mining purposes on the 6th May 1903 with the following clause :—

“I bind myself to give you such leases as you may require from time to time after the expiration of this agreement on same conditions. Should I fail to do so, I bind myself to pay you all the expenses that you incur.”

The plaintiff entered into possession according to the terms of the lease and erected certain structures on the land with a view to carry on the mining operations. But sometime in 1915

* Second Appeal No. 1721 of 1919.

the defendant obtained a decree for possession of the land inasmuch as the present plaintiff had not on the expiry of the term mentioned in the lease taken out any renewal. Thereupon the plaintiff called upon the defendant, on 4th November 1916, to execute a lease for five years with the clause for renewal in the terms set out above but the defendant refused to grant any such renewal. The lessee then instituted this suit.

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Both the lower Courts have held that the plaintiff is entitled to such a lease as he asked for and gave a decree for specific performance. It was argued before the District Munsif that the decree in the suit of 1915 operated as *res judicata* but he held that in that suit no question as to the plaintiff's right to renewal was decided and that therefore the present suit was not barred. No argument has been addressed to us on this plea. Another defence set up was that the plaintiff was guilty of laches in not asking for the renewal of the lease since the expiry of the first term in 1908, until 1916. But then he was in possession and was willing to carry out his part of the agreement and he was never called upon to take a renewal. The lower Appellate Court has discussed this question fully and is right in holding that the plaintiff's right to enforce the agreement has not been lost by laches.

The point, however, which was pressed before us with great persistence was that the agreement was in violation of the rule against perpetuities as laid down in section 14 of the Transfer of Property Act. That section enacts the well-known rule that no interest in property can be created to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some persons who shall be in existence at the expiration of that period. The short answer to this argument is that the agreement in question cannot properly be said to be a transfer of property which is defined by section 5 of the Act as

“an act by which a living person conveys property, in present or in future, to one or more other living persons or to himself and one or more other living persons.”

Here there is no conveyance of property after the expiry of the term of five years. The agreement in question is only a covenant to renew at the option of the lessee. A covenant like this is a covenant running with the land and is not subject to any

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rule against perpetuities. In Halsbury's Laws of England, Volume 18, para. 935, it is pointed out that a covenant for perpetual renewal is enforceable if the intention in that behalf is clearly shown. The nearest case that has been cited in support of the appellant's contention is *Kolathu Ayyar v. Bunga Vadhyar*(1), where a contract of pre-emption was held to offend against the rule against perpetuities for it fixed no time within which the agreement to convey was to be performed. Even there the contract was sought to be enforced against the heirs of the person who had entered into it and not, as here, against the lessor himself. But apart from that a contract of pre-emption stands on a different footing from a covenant to renew from time to time which has always been recognized both in England and here as a perfectly valid and enforceable contract.

The Second Appeal must be dismissed with costs.

K.R.

APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, and Mr.
Justice Seshagiri Ayyar.*

CHAMIYAPPA THARAGAN (FIRST DEFENDANT), APPELLANT,

v.

RAMA AYYAR AND EIGHT OTHERS (PLAINTIFF AND DEFENDANT),
RESPONDENTS.*

1920,
August
2, 3, 4, 5
and 18.

Attachment in execution of a money-decree—Section 64, Civil Procedure Code, Act (V of 1908)—Sale of the same properties under a mortgage decree against the same judgment-debtor, effect of an attachment—Extinguishment of attaching creditor's right to redeem—Attachment whether constituting lis pendens—Suit on mortgage—Attaching creditor whether proper party—Subsequent agreement to sell to another by judgment-debtor pending application for re-attachment but without notice—Order to re-attach whether res judicata against person agreeing to buy—Execution sale under money decree—whether conveying also the right of attaching creditor to redeem—Sections 85 and 91, Transfer of Property Act (IV of 1882).

A Court-sale of the judgment-debtor's interest in attached property puts an end to the attachment and incidentally to the attaching creditor's right of redemption under section 91 of the Transfer of Property Act.

(1) (1915) I.L.R., 38 Mad., 114.

* Appeal No. 303 of 1919.